

ESTTA Tracking number: **ESTTA647647**

Filing date: **12/30/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215843
Party	Defendant Collier's Reserve Country Club, Inc.
Correspondence Address	JENNIFER L. WHITELAW WHITELAW LEGAL GROUP 3838 TAMIAMI TRL N STE 310 NAPLES, FL 34103-3586 UNITED STATES ttabmail@whitelawfirm.com
Submission	Answer
Filer's Name	JENNIFER L. WHITELAW
Filer's e-mail	ttabmail@whitelawfirm.com
Signature	/JENNIFER L. WHITELAW/
Date	12/30/2014
Attachments	Answer and Affirmative Defenses.pdf(136019 bytes)

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies same.

2. Applicant denies the allegation of paragraph 2.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3, and therefore denies same.
4. Applicant states that the referenced public record speaks for itself and denies the remainder of paragraph 4.
5. Applicant admits that the filing of U.S. Trademark Serial No. 85848672 is Applicant's, and further states that the referenced public record speaks for itself, and to the extent the allegation alleges otherwise, Applicant denies the same, rest, and remainder of the allegations of paragraph 5.
6. Applicant denies the allegations of paragraph 6.
7. Applicant denies the allegations of paragraph 7.
8. The allegation of paragraph 8 improperly presumes a limitation of the scope, nature, exercise, and/or character of Applicant's services and is therefore denied as to paragraph 8.
9. The allegation of paragraph 9 improperly presumes a limitation of the scope, nature, exercise, and/or character of Applicant's services and is therefore denied as to paragraph 9.
10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, and therefore denies same.
11. Applicant notes that Opposer improperly pleads evidentiary matters as the basis of paragraph 11, despite the clear provisions of TBMP §309.03(a)(2) which state that *"Evidentiary matters should not be pleaded in a complaint. They are matters for proof, not for pleading."* The allegations of paragraph 11 are therefore not in accordance with

the rules of the Board, rendering them improper for the basing of an answer, thus allegations of paragraph 11 are denied.

12. Applicant denies the allegations of paragraph 12.

13. The allegation of paragraph 13 improperly presumes a limitation of the scope, nature, exercise, and/or character of Applicant's services and is therefore denied as to paragraph 13.

14. Applicant denies the allegations of paragraph 14

15. Applicant denies the allegations of paragraph 15.

16. Applicant denies the allegations of paragraph 16.

17. Applicant denies the allegations of paragraph 17.

18. Applicant denies the allegations of paragraph 18.

19. Applicant admits that it has an address as stated, and denies the remainder of the allegations of paragraph 19.

20. Applicant notes that Opposer improperly pleads evidentiary matters as the basis of paragraph 20, despite the clear provisions of TBMP §309.03(a)(2) which state that *"Evidentiary matters should not be pleaded in a complaint. They are matters for proof, not for pleading."* The allegations of paragraph 20 are therefore not in accordance with the rules of the Board, rendering them improper for the basing of an answer, thus allegations of paragraph 20 are denied.

21. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 as stated, and therefore denies same.

22. The allegation of paragraph 22 improperly presumes a limitation of the scope, nature, exercise, and/or character of Applicant's services and is therefore denied as to paragraph 22.

23. The allegation of paragraph 23 improperly presumes a limitation of the scope, nature, exercise, and/or character of Applicant's services and is therefore denied as to paragraph 23.

24. Applicant denies the allegations of paragraph 24.

25. Applicant denies the allegations of paragraph 25.

26. Applicant denies the allegations of paragraph 26.

27. Applicant denies the allegations of paragraph 27.

28. Applicant denies the allegations of paragraph 28.

29. Applicant denies the allegations of paragraph 29.

30. Applicant denies the allegations of paragraph 30.

31. Applicant denies the allegations of paragraph 31.

32. Applicant denies the allegations of paragraph 32.

33. Applicant denies the allegations of paragraph 33.

34. Applicant notes that Opposer improperly pleads evidentiary matters as the basis of paragraph 34, despite the clear provisions of TBMP §309.03(a)(2) which state that *"Evidentiary matters should not be pleaded in a complaint. They are matters for proof, not for pleading."* The allegations of paragraph 34 are therefore not in accordance with the rules of the Board, rendering them improper for the basing of an answer, thus allegations of paragraph 34 are denied.

35. The allegation of paragraph 35 improperly presumes a limitation of the scope, nature, exercise, and/or character of Applicant's services and is therefore denied as to paragraph 35.

36. With reference to the composite allegation labeled by Opposer as paragraph 36, containing Opposer's multiple improper references therein to various "printouts" by unnamed and unidentified persons, Opposer's assertion of various alleged "facts", Opposer's interjection of arguments, Opposer's compilation of assertions concerning "*memberships*", Opposer's efforts to analogize "*refuges*", "*wildlife*" and "*subtropical flora*" within the pleading, Opposer's improper sentence structure, Opposer's typographical punctuation or grammatical and/or composition errors (Applicant cannot presume which), Opposer's improper references to "*See also*", Opposer's inappropriate cataloging of Exhibits to an allegation, Opposer's reference to "*the following quoted language*" when such never follows within the apparent parenthetical, Opposer's multiple apparent unmatched parentheses, all bound into a single allegation at Paragraph 36, Applicant notes that Opposer improperly pleads evidentiary matters as the basis of paragraph 36, despite the clear provisions of TBMP §309.03(a)(2) which state that "*Evidentiary matters should not be pleaded in a complaint. They are matters for proof, not for pleading.*" The allegations of paragraph 36 are therefore not in accordance with the rules of the Board, rendering them improper for the basing of an answer, thus allegations of paragraph 36 are denied.

37. Applicant denies the allegations of paragraph 37.

38. Applicant denies the allegations of paragraph 38.

39. Applicant denies the allegations of paragraph 39.

40. Applicant denies the allegations of paragraph 40.

Applicant further denies each, every and all of the remaining allegations asserted by Opposer in all counts and/or paragraphs and/or in the prefatory paragraph contained in the Notice of Opposition which are not expressly admitted to be true herein and, based upon present knowledge and belief, hereby sets forth its following Affirmative Defenses.

FIRST AFFIRMATIVE DEFENSE

Applicant's Mark is not merely descriptive, not primarily merely a surname and is not primarily geographically descriptive. Even, assuming for purposes of argument only, that Applicant's mark were to be any of the foregoing, Applicant's mark is distinctive, has acquired distinctiveness, and/or has acquired secondary meaning.

SECOND AFFIRMATIVE DEFENSE

The Notice of Opposition fails to state a claim upon which relief can be granted, including but not limited to with respect to any claims asserted by Opposer therein.

THIRD AFFIRMATIVE DEFENSE

Opposer's assertion of rights against Applicant is barred, in whole or in part, by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

This action is barred, in whole or in part, by the doctrine of acquiescence.

FIFTH AFFIRMATIVE DEFENSE

This action is barred, in whole or in part, by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

This action is barred, in whole or in part, by the doctrine of estoppel and/or unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Opposer is or may not be the real party in interest to enforce all or some of the rights claimed in this action.

EIGHTH AFFIRMATIVE DEFENSE

Opposer will not be harmed by Applicant's registration and therefore lacks standing to oppose Applicant's mark.

ADDITIONAL AFFIRMATIVE DEFENSES RESERVED

Applicant specifically reserves the right to assert such additional Affirmative Defenses as may be found to be applicable through or following discovery in this proceeding.

WHEREFORE, having fully answered and set forth its Affirmative Defenses as required, Applicant requests that the Notice of Opposition herein be dismissed with prejudice at the cost of Opposer.

Respectfully submitted,

/JENNIFER L. WHITE LAW/
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of this **APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSER'S NOTICE OF OPPOSITION** was provided to counsel of record for Opposer:

Carrie L. Kiedrowski and Angela R. Gott
Jones Day
901 Lakeside Avenue
Cleveland, OH 44114

via first class mail, postage prepaid on December 30, 2014.

/JENNIFER L. WHITELAW/
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